public health crisis in poor countries is enormous. In countries afflicted by epidemics and pandemics like HIV/AIDS, malaria, and tuberculosis, growth and development will be threatened until these scourges can be contained. Resources from the developed world are necessary but will be effective only with honest governance, which supports prevention programs and provides effective local infrastructure.''

This bill is not just about spending more money to build African health capacity. It is also about spending that money better. This bill authorizes assistance to improve management and reduce corruption within the health sector. It requires the President to establish a monitoring and evaluation system to measure the effectiveness of our assistance.

Knowledge sharing is also important: Each minister of health and each nongovernmental organization should not have to reinvent the wheel.

Two years after enactment, this bill will require the production of a document publicizing best practices. This clearinghouse of information will provide valuable help for developing countries throughout the world.

The United States provides billions of dollars to fight HIV/AIDS, malaria, TB, and other health challenges in Africa. It is critical, as we pursue these programs, that we better integrate them within a framework to strengthen health systems as a whole. We need to help countries better invest their own human and material resources as well as our assistance.

In 2005, 2 million people in Sub-Saharan Africa died of AIDS, and 2.7 million people became newly infected. Nearly a million African children under the age of 5 died of malaria. Hundreds of thousands of Africans died last year of TB, cholera, dysentery, and other infectious diseases or in childbirth. These devastating mortality rates also strangle opportunities for economic development. But we can begin to change those trajectories by investing in African health capacity. Imagine living in a country like Ethiopia, with 3 doctors for every 100,000 people. Then ask yourself what we can do about it. This bill is a start.

I thank my colleagues, Senators COLEMAN, DEWINE, and FEINGOLD, for joining me in introducing this bipartisan bill, and I hope others will join us.

DETAINEE TREATMENT ACT

Mr. GRAHAM. Mr. President, I rise today to correct the public record with regard to a matter raised by the U.S. Supreme Court's decision in *Hamdan* v. *Rumsfeld*, 126 S.Ct. 2749 (2006). In part II of its opinion, the majority in Hamdan addressed whether the Detainee Treatment Act barred Hamdan's lawsuit from proceeding in its then-present form. As the court noted, the DTA provides that ''no court, justice, or judge shall have jurisdiction to hear or consider'' claims filed by Guantanamo detainees, except under the review standards created by that act.

In the course of drafting the DTA conference language regarding jurisdiction, Senator KYL, myself, and several others we consulted, specifically relied on the Bruner line of cases for guidance. In that line of cases, we had taken particular note of Justice Stevens's opinion in Landgraf, where, in discussing the Bruner line, he wrote that the Court had a consistent practice of ordering an action dismissed when the jurisdictional statute under which that action had been filed was subsequently repealed. Since that was precisely what we were doing in the DTA, reversing the Rasul finding of jurisdiction through the habeas statute, we were very comfortable with how our language addressed the jurisdictional change.

Likewise, the Bruner/Landgraf line of cases informed the enactment language regarding the substantive law changes we were making. Because of Justice Stevens's explanation in Landgraf, we felt we had to make those provisions specifically apply to pending cases. However, for everything else, including the requirements for the executive branch to do certain things within certain time periods, having a single enactment statement saying everything applied retroactively did not make sense. So, with that and other concerns, we ended up with what emerged from the conference process between passage of the amendment in November and adoption of the conference product in December. It was complicated and merged a number of concepts.

You see, as the author of that part of the Detainee Treatment Act, it was never my intent to carve out pending cases from the effect of that act. As I have detailed above, we knew the governing law and expected the courts to apply it. And I never hid this intent or understanding. My statements regarding this intent were consistent from the beginning of the debate on November amendment until final passage of the conference report on December 21. This is why I issued a joint statement with Senator LEVIN in early January of this year which stated, ''[t]he intent of the language contained within the Graham-Levin-Kyl amendment is that Courts will decide in accord with their own rules, procedures and precedents whether to proceed in pending cases.''

In reviewing the record, Justice Scalia and the other dissenters recognized this consistency. Justice Scalia stated that, ''[s]ome of the statements of Senator GRAHAM, a sponsor of the bill, only make sense on the assumption that pending cases are covered.'' Thus, they correctly concluded that the jurisdictional removal language included all pending cases.

Indeed, when the final version of the DTA passed the Senate, I and some of the cosponsors of my November amendment included a colloquy in the RECORD in which we made clear that we were perfectly aware of the Supreme Court's previous holdings governing jurisdiction-removing statutes and that we had not chosen the language of the amendment by accident. We had initially intended to explain our provisions of the DTA on the floor, but with time growing short, and rather than forcing our colleagues to listen as we droned on, we dropped the statement into the RECORD and everyone went home for the Christmas break.

The Hamdan majority addressed this statement in footnote 10 of its opinion. First, the Court noted that on November 15, ''Senator LEVIN urged adoption of an alternative amendment [the final version of my amendment] that 'would apply only to new habeas cases filed after the date of enactment.''' The Court then dismissed my own statement of views in the following passage:

> While statements attributed to the final bill's two other sponsors, Senators Graham and Kyl, arguably contradict Senator Levin's contention that the final version of the Act preserved jurisdiction over pending habeas cases, see 151 Cong. Rec. S14263–S14264 (Dec. 21, 2005), those statements appear to have been inserted into the Congressional Record *after* the Senate debate. See Reply Brief for Petitioner 5, n. 6; see also 151 Cong. Rec. S14260 (statement of Sen. Kyl) (''I would like to say a few words about the *now-completed* National Defense Authorization Act for fiscal year 2006'' (emphasis added)). All statements made during the debate itself support Senator Levin's understanding that the final text of the DTA would not render subsection (e)(1) applicable to pending cases. See, *e.g.*, *id.*, at S14245, S14252–S14253, S14274–S14275 (Dec. 21, 2005).

There are three misstatements of fact in footnote 10 of Hamdan that I would like to publicly correct. First, the colloquy that Senator KYL and I submitted for the RECORD was not submitted after the Senate's consideration of the bill. It was submitted well before the final vote on the conference report, and was necessary due to the substantial changes we made between the adoption on the amendment on November 15 and the adoption of the conference report on December 21.

Second, I have had a member of my staff view the tapes of the Senate's deliberations on November 15 that were prepared by the Senate Recording Studio. These tapes confirm that the statement from Senator LEVIN that the Supreme Court quoted from that day was not made live, but instead appears to have been submitted for the RECORD.

And third, my staff has viewed the tapes of the Senate's deliberations on December 21. These tapes confirm that the statements to which the Supreme Court cites from that day, statements by Senators LEAHY, DURBIN, and FEINGOLD, also were not spoken live on the Senate floor but were instead submitted for the RECORD. As I will discuss later, it generally doesn't matter to me if a statement is live or not, but it does bear noting the distinction given the Court's focus on it in this case.

The Supreme Court appears to have been misled about the nature of the

legislative statements regarding the Detainee Treatment Act. The court dismissed my and Senator KYL's statements on the basis that they were submitted for the Record. Instead, it relied on statements where it thought Senator LEVIN had publicly ''urged'' other members to accept his view, and on statements that it believed had been spoken live ''during the debate itself' on December 21.

In reality, there was no ''debate itself' on the Detainee Treatment Act on December 21.

The final Defense authorization conference report was adopted by a voice vote at 10 p.m. Of the 35 pages of the CONGRESSIONAL RECORD accompanying the final passage of that Act, virtually none of it was spoken live on the Senate floor. Nothing regarding the DTA was said live on December 21. In other words, the statements that Senator KYL and I submitted for the RECORD and that the Hamdan majority dismissed are identical in nature to all of the statements from November 15 and December 21 that the Hamdan majority quoted and cited in support of its construction of the DTA.

I should emphasize that although the Supreme Court was misled, I do not believe that it was misled by any of my colleagues. I believe that Senators LEVIN, LEAHY, DURBIN, and FEINGOLD acted entirely appropriately by submitting statements for the RECORD regarding their interpretation of the DTA. As I mentioned, the Senate considered the final Defense bill that contained the DTA late in the evening four days before Christmas. Although the Senators who submitted statements for the Record had every right to delight their colleagues with 6 hours of speeches and debate at that hour, I am certain that every member of the Senate appreciated the fact that these statements were submitted for the RECORD instead.

Where does the Court's mistake spring from then? The Supreme Court's mistake about the legislative history of the DTA appears to have been created by briefs filed by Mr. Neal Katyal, the counsel of record for Mr. Hamdan in the Supreme Court. Much of the Hamdan majority's analysis of the DTA and its legislative history appears to have been adopted verbatim from these briefs. Mr. Katyal's brief, for example, wrongly asserts that the colloquy between Senator KYL and me was ''inserted into the RECORD after the legislation passed.'' Although statements for the RECORD must be submitted on the same day that they are to appear in the daily edition of the RECORD, no public record is kept of when exactly a particular statement was submitted. Mr. Katyal could not possibly have known whether my colloquy with Senator KYL was submitted before or after final passage of the bill, unless he had asked me or my staff, which he did not do. Had he done so, we would have happily informed him that our statement was submitted hours before final passage. Yet he asserted to the Supreme Court that it was submitted ''after the legislation passed,'' a misstatement that the Supreme Court apparently believed and that it repeated in its majority opinion.

Mr. Katyal's brief also asserts that my colloquy with Senator KYL was ''entirely post hoc,'' and that Senator KYL and I ''waited until the ink was dry'' to submit our views. However, his brief's extensive citations to those December 21 statements that favored petitioner Hamdan are not accompanied by similar bold disclaimers.

Indeed, the very statements of Senators LEAHY, DURBIN, and FEINGOLD that the Supreme Court believed had been made ''during the debate itself' appear to have been brought to the court's attention by Mr. Katyal's brief. That passage of the brief makes no mention of the fact that these statements were not spoken live on the Senate floor. The brief also quotes at length from the same statement by Senator LEVIN on November 15 from which the Supreme Court later quoted in its opinion. Not only does the brief fail to warn the reader that this statement was not spoken live, the brief even asserts that ''[e]vidence of reliance on Senator LEVIN's statement was immediate,'' and it cites to a statement by Senator REID that refers to Senator LEVIN's views.

I can see how a reasonable person would understand this passage to mean that Senator LEVIN's and Senator REID's statements were spoken live on the Senate floor. The brief conjures up a scene of one Senator listening to another Senator speak and then ''immediately'' rising to express his agreement. Yet that scene never took place. Neither Senator LEVIN's nor Senator REID's remarks were made live on the Senate floor.

In the usual case, I do not think that an attorney would have a duty to tell a court whether the Senate floor statements that he is citing are live or not. Indeed, most attorneys would have no way of knowing whether a particular statement is live. Under Senate rules, submitted statements that pertain to pending Senate business are presumed to be live statements and are automatically included in the RECORD among live debate. In my opinion, this is critical to the effective and efficient functioning of the Chamber. I am confident that my colleagues would agree with me.

Here, however, Mr. Katyal made a point of seeking to discredit statements in the CONGRESSIONAL RECORD on the basis that they had not been spoken live. Given that he stressed the introduction of some statements, I believe it was incumbent on him to inform the Court that the statements on which he relied also were not spoken live.

I should again emphasize that I do not criticize any of my colleagues in the Senate. Senators LEVIN, LEAHY, DURBIN, and FEINGOLD's actions were entirely honorable and aboveboard. Indeed, Senators LEAHY, DURBIN, and FEINGOLD, as well as others who opposed the DTA had every right to have their opinions, thoughts, and intent recorded, both in November and in December.

In closing, I would also like to express my concern about the soundness of the distinction that the Hamdan majority drew between live and submitted statements. Although the reality of Senate floor debate is not quite as unflattering as what Justice Scalia suggests in his dissent, it is true that live speeches made by Senators are not always heard by other Members. Senate floor debate is only one of the many sources of information on which Senators rely when deciding how to cast their votes. Other than when Senators express agreement with one another through a colloquy or by expressly referring to each other's views, Senate floor statements should not be understood to represent the understandings and intentions of anyone other than the Member making the statement. Nor should the courts assume that Senators are unaware of court precedent and rules of construction.

I hope that this statement will prevent further mischaracterization of the legislative record of the Detainee Treatment Act. Senators LEVIN, LEAHY, DURBIN, and FEINGOLD's December comments on the act are all entitled to consideration, but no more so than mine or Senator KYL's. The Supreme Court was misled in Hamdan, and it appears to have based its decision, at least in part, on a simple mistake of fact. That is a result that all those who respect the democratic process and the rule of law should regret.

REMEMBERING U.S. SENATOR HIRAM FONG

Mr. AKAKA. Mr. President, on August 18, 2006, I will have the honor and privilege to commemorate the 47th anniversary of the admission of Hawaii to the United States by dedicating the building housing the Kapalama Post Office in honor of the late U.S. Senator Hiram L. Fong. It is fitting that on Admissions Day, the State of Hawaii commemorates the life of one of its strongest advocates for statehood—Senator Fong—by dedicating the postal facility at 1271 North King Street in Honolulu, which stands near Senator Fong's boyhood home in Kalihi.

Like so many of us with immigrant parents, Senator Fong will be remembered not only for his many accomplishments but also for his humble beginnings. As one of 11 children born to parents from China, he graduated with honors from the University of Hawaii in 1930, and continued his education at Harvard University where he received a law degree 5 years later. In 1959, when Hawaii achieved statehood, he was elected to fill one of two seats in the U.S. Senate where he served from 1959 until January 2, 1977.

Senator Fong was this Nation's first U.S. Senator of Asian ancestry. He